MINUTES OF THE May 21, 2004 MEETING OF THE EASTERN SNAKE PLAIN AQUIFER WORKING GROUP EXPANDED NATURAL RESOURCES INTERIM COMMITTEE 9:30 a.m. Burley Inn, Burley Idaho

The meeting was called to order at 9:30 a.m. by Co-Chairman, Senator Laird Noh. The following working group members were present: Co-Chairman, Representative Dell Raybould, Senator Don Burtenshaw, Senator Stan Williams, Senator Brent Hill, Senator Dean Cameron, Senator Clint Stennett, Representative JoAn Wood, Representative Maxine Bell, Representative Jack Barraclough and Representative Tim Ridinger. Other committee members present were: Representative Scott Bedke, Representative Burt Stevenson, and Representative Pete Nielsen. Senator Bert Marley and Representative Wendy Jaquet were absent and excused. Speaker Bruce Newcomb was also in attendance. Representative JoAn Wood recorded the minutes.

Additional parties in attendance are set forth in sign up sheets maintained in the records of Legislative Services, marked as Attachment "A" of these minutes.

Clive Strong, Division, Division Chief, Natural Resources Division of the Attorney General's Office, provided the working group with an overview of the Upper Snake Component of the Nez Perce Term Sheet. Mr. Strong presented a power point presentation, the general content of which is reflected in these minutes. A copy of Mr. Strong's power point presentation is available in the records of the Legislative Services Office marked as Attachment "B" of these minutes.

Mr. Strong's presentation included a detailed review of the two tiers of the Upper Snake component. The two tiers include provisions for a) flows defined by the Swan Falls Agreement to be decreed by the SRBA Court to the Idaho Water Resources Board and b) for a flow augmentation program based upon renewal of Section 42-1763B, Idaho Code, for the term of the Agreement which may extend for a period of up to thirty years.

According to Mr. Strong, flow augmentation will be done in compliance with Idaho state law and regulations, existing water bank rules and existing local rental pool procedures, including last to fill and agricultural preference. The parties did, however, agree to refrain from exercising agricultural preference for current uncontracted space and powerhead during the term of the agreement.

Mr. Strong continued by stating that the program provides for a maximum amount of flow augmentation but does not guarantee any specific amount of flow augmentation water. Sources of flow augmentation include uncontracted storage space, powerhead, Oregon natural flow, Shoshone-Bannock storage, rental water and acquired natural flow.

Mr. Strong noted that the Bureau of Reclamation will be allowed to rent or acquire up to 60,000 acre feet of natural flow water rights between Milner and Swan Falls. This water may be rented for flow augmentation purposes through the Idaho Water Resource Board's water bank.

The Bureau will provide up to two million dollars to local governments to mitigate for impact of any acquisitions. Mr. Strong went on to state that no more than 487,000 acre feet may be released for flow augmentation and that 60,000 acre feet must be counted as part of the 427,000 acre feet commitment.

In terms of powerhead, Mr. Strong stated that only Palisades and Anderson Ranch powerhead may be used for flow augmentation. Powerhead can only be used to meet the 427,000 acre feet commitment. If used, powerhead is the last-to-last to fill. The Bureau will mitigate for use of powerhead.

Mr. Strong then discussed rental rates. Those rates will be $14 per acre foot through the year 2012, $17 per acre foot from 2013 through 2017, $20 per acre foot from 2018 through 2022 and $23 per acre foot from 2023 through 2030. The rates include administrative fees.

Mr. Strong noted that the United States will make uncontracted space available to irrigation delivery entities for an equivalent amount of replacement water.

In terms of the scope of the settlement, Mr. Strong stated that it would provide a final resolution of all Nez Perce federal reserved water right claims and ESA incidental take coverage for diversions of water within the Snake River Basin in Idaho above Hells Canyon Dam for a period of up to thirty years.

Mr. Strong clarified to the group that the Nez Perce Term Sheet is not final. It must first be approved by Congress, the Idaho Legislature, the Nez Perce Tribe and, in addition, a biological opinion must be issued by March 31, 2005. The term sheet represents an agreement by the parties to move forward in good faith to seek implementation of the terms.

In regard to the effect of the agreement on conjunctive management, Mr. Strong noted that the rental of water for flow augmentation will be in competition with rental water for conjunctive management solutions. It also provides a cap on the amount of flow augmentation thereby reducing the potential conflict over use of water for flow augmentation. In addition, natural flow augmentation will reduce the demand for storage water for flow augmentation above Milner. The agreement puts upward pressure on rental price in the short term. The agreement also will impact the reliability of refill. Reclamation will be allowed to be more cooperative on conjunctive management and it also removes the cloud of the ESA over all water users.

According to Mr. Strong, there is a risk of litigation in two contexts, that being the SRBA and ESA compliance. He then discussed a number of legal cases to consider. A copy of the term sheet, a summary of the agreement and the full agreement may be found on the Idaho Department of Water Resources website located at: http://www.idwr.state.id.us

Additional agenda items included Water District 120's mitigation plan framework as well as presentations and discussions relating to water management issues including an overview of water management options, a water management project report and a discussion of aquifer management goals.

Brian Patton with the Idaho Department of Water Resources provided the group with a power point presentation relating to Thousand Springs water management projects, the general content of which is reflected in these minutes. A copy of Mr. Patton's power point presentation is available in the records of the Legislative Services Office marked as Attachment "C" of these minutes.

Mr. Patton noted that the objective is to identify projects that could extend the use of available water supplies in the Thousand Springs reach. The Department has compiled a list of possibilities and are proceeding to investigate them in more detail. State water law will be followed, but changes in points of diversion, water replacements, and water exchanges are contemplated. The Department is proceeding with the assistance of Chuck Brockway.

Mr. Patton went on to discuss the W-Canal options which include the use of W-Canal spill and rental water delivered through the North Side Canal System and delivery to irrigation users in the Hagerman Valley to offset their use of spring water for irrigation.

The Malad Gorge State Park Option would involve catching W-Canal spills and routing them into Hagerman Valley for irrigation use. Gravity-pressured water deliveries would be provided for the water users.

Mr. Patton continued with the Big Springs Option. With that option, W-Canal spills and rental water would be delivered to users in the Big Springs area. Possibilties include the Hagerman Water Users Association and the Big Springs Water Users Association. The Big Springs Water Users pipeline is a combined irrigation and domestic system so provisions for domestic water would have to be made.

The Weatherby Springs-Hoagland Tunnel Option would involve the delivery of W-Canal spills and rental water to irrigation users in the Weatherby Springs-Hoagland Tunnel area. Possibilities include the delivery of water into Jones Irrigation Pumps, Bar-S Ditch, or Hoagland Ditch.

Mr. Patton proceeded to review pump back options. In the Patton Ditch Spill Pump Back to Irrigation option, there would be a pump back of Patton Ditch (E.M. Bell Ditch) spill to the Snake River for irrigation. According to Mr. Patton, this could offset irrigation use from springs or spring-fed streams.

Another option would be to pump to Sands, Bell, and Buckeye Ditches divert from Billingsley Creek and to pump from the Snake River to offset the diversion of Billingsley Creek flow in these ditches.

Mr. Patton moved on to address the re-use of hatchery outflows for irrigation in the Big Springs reach. In that scenario, they would pump from hatchery outflows to offset large irrigation use of springs in the Big Springs reach. Possible delivery locations include the Hagerman Water Users Association and the Big Springs Water Users Association. The Big Springs Water Users pipeline is a combined irrigation and domestic system so provisions for domestic water would have to be made.

Another option involving pumping would be to pump back Bell and Buckeye Ditch spill to the Snake River for irrigation. This could offset irrigation use from the Curren Ditch.

Mr. Patton next reviewed the option of pumping from the Snake River or Hunt Ditch to irrigation which could offset irrigation use from the Curren Ditch.

Mr. Patton also noted the option of offsetting Bridal Veil Falls irrigation. This option would involved delivering spring flows from Bridal Veil Falls across the Snake River for irrigation and pumping from the Snake River for irrigation use to offset use of flows for irrigation.

Mr. Patton continued by addressing pump backs and pipelines from other springs in the Clear Lakes - Niagara Springs area. The Clear Lake Pump back project was specifically included in the Eastern Snake Plain Aquifer agreement as a project to evaluate. The concept would be to pump water from Clear Lake to the upper end of the hatcheries and blend it with spring water entering the hatcheries. The Niagara Springs pump back to irrigation would involve pumping back hatchery outflows up to the IDFG irrigation ditch. This would allow all available flow to be used at the hatcheries, then sufficient water for irrigation use would be pumped to the irrigation ditch.

Another option Mr. Patton reviewed was delivering unused Crystal Springs spill to Niagara Springs users and Clear Lake through a seven mile long gravity pipeline. Unused Crystal Springs spill is held as an instream flow water right by the Idaho Water Resource Board.

Mr. Patton went on to review offsetting Banbury Spring irrigation use by pumping from the Snake River. Banbury water would be delivered to Clear Lake through a pumping plant and a three mile pipeline. The Banbury system is a combined irrigation and domestic system so provisions for domestic water would have to be made.

In the Blue Lakes option, Mr. Patton noted that they would be looking at replacing irrigation use from springs at Blue Lakes Country Club with pumping from the Snake River. There would be an offset of spring water for other uses.

According to Mr. Patton, the next steps will be to rank the possible projects for cost and contribution toward solving the problem. After that, they will need to select the most promising projects and complete a more detailed cost and feasibility study.

The working group also heard reports by ground water users and spring water users as well as a congressional report. In addition, Jay Engstrom with the Department of Commerce advised the group about the status of the assistance grants for spring users. The working group also heard from the Dean Tranmer, City Attorney for Pocatello.

Working group members, as well as various individuals in attendance, underscored the need to keep the process moving along. Senator Noh and Representative Raybould commented on the next step in the group’s progress in terms of appointing a number of specific study groups

that will include members of the public to work toward solutions.

The meeting was adjourned by Senator Noh at approximately 4:30 p.m.